

Federal Motor Carrier Safety Administration, DOT

§ 355.3

drivers of CMVs in intrastate commerce.

[65 FR 15102, Mar. 21, 2000, as amended at 77 FR 24126, Apr. 20, 2012; 78 FR 58478, Sept. 24, 2013]

§ 350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved in intrastate commerce?

The FMCSA strongly discourages exemptions for specific industries, but will consider such requests if the State submits documentation containing information supporting evaluation of the following 10 factors:

(a) Type and scope of the industry exemption requested, including percentage of industry affected, number of vehicles, mileage traveled, number of companies involved.

(b) Type and scope of the requirement to which the exemption would apply.

(c) Safety performance of that specific industry (*e.g.*, accident frequency, rates and comparative figures).

(d) Inspection information (*e.g.*, number of violations per inspection, driver and vehicle out-of-service information).

(e) Other CMV safety regulations enforced by other State agencies not participating in the MCSAP.

(f) Commodity transported (*e.g.*, livestock, grain).

(g) Similar variations granted and the circumstances under which they were granted.

(h) Justification for the exemption.

(i) Identifiable effects on safety.

(j) State's economic environment and its ability to compete in foreign and domestic markets.

§ 350.345 How does a State apply for additional variances from the FMCSRs?

Any State may apply to the Administrator for a variance from the FMCSRs for intrastate commerce. The variance will be granted only if the State satisfactorily demonstrates that the State law, regulation or enforcement practice:

(a) Achieves substantially the same purpose as the similar Federal regulation.

(b) Does not apply to interstate commerce.

(c) Is not likely to have an adverse impact on safety.

PART 355—COMPATIBILITY OF STATE LAWS AND REGULATIONS AFFECTING INTERSTATE MOTOR CARRIER OPERATIONS

Subpart A—General Applicability and Definitions

Sec.

355.1 Purpose.

355.3 Applicability.

355.5 Definitions.

Subpart B—Requirements

355.21 Regulatory review.

355.23 Submission of results.

355.25 Adopting and enforcing compatible laws and regulations.

APPENDIX A TO PART 355—GUIDELINES FOR THE REGULATORY REVIEW

AUTHORITY: 49 U.S.C. 504 and 31101 *et seq.*; and 49 CFR 1.87.

SOURCE: 57 FR 40962, Sept. 8, 1992, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 355 appear at 66 FR 49870, Oct. 1, 2001.

Subpart A—General Applicability and Definitions

§ 355.1 Purpose.

(a) To promote adoption and enforcement of State laws and regulations pertaining to commercial motor vehicle safety that are compatible with appropriate parts of the Federal Motor Carrier Safety Regulations.

(b) To provide guidelines for a continuous regulatory review of State laws and regulations.

(c) To establish deadlines for States to achieve compatibility with appropriate parts of the Federal Motor Carrier Safety Regulations with respect to interstate commerce.

§ 355.3 Applicability.

These provisions apply to any State that adopts or enforces laws or regulations pertaining to commercial motor vehicle safety in interstate commerce.

§ 355.5

49 CFR Ch. III (10–1–15 Edition)

§ 355.5 Definitions.

Unless specifically defined in this section, terms used in this part are subject to the definitions in 49 CFR 390.5.

Compatible or *Compatibility* means that State laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and the HMRs or have the same effect as the FMCSRs; and that State laws applicable to intrastate commerce are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under §§ 350.341, 350.343, and 350.345 of this subchapter.

Federal Hazardous Materials Regulations (FMHRs) means those safety regulations which are contained in parts 107, 171–173, 177, 178 and 180, except part 107 and §§ 171.15 and 171.16.

Federal Motor Carrier Safety Regulations (FMCSRs) means those safety regulations which are contained in parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam and the Virgin Islands.

[57 FR 40962, Sept. 8, 1992, as amended at 65 FR 15109, Mar. 21, 2000]

Subpart B—Requirements

§ 355.21 Regulatory review.

(a) *General.* Each State shall annually analyze its laws and regulations, including those of its political subdivisions, which pertain to commercial motor vehicle safety to determine whether its laws and regulations are compatible with the Federal Motor Carrier Safety Regulations. Guidelines for the regulatory review are provided in the appendix to this part.

(b) *Responsibility.* The State agency designated as lead agency for the administration of grants made pursuant to part 350 of this subchapter is responsible for reviewing and analyzing State laws and regulations for compliance with this part. In the absence of an officially designated Motor Carrier Safe-

ty Assistance Program (MCSAP) lead agency or in its discretion, the State shall designate another agency responsible to review and determine compliance with these regulations.

(c) *State review.* (1) The State shall determine which of its laws and regulations pertaining to commercial motor vehicle safety are the same as the Federal Motor Carrier Safety or Federal Hazardous Materials Regulations. With respect to any State law or regulation which is not the same as the FMCSRs (FHMRs must be identical), the State shall identify such law or regulation and determine whether:

(i) It has the same effect as a corresponding section of the Federal Motor Carrier Safety Regulations;

(ii) It applies to interstate commerce;

(iii) It is more stringent than the FMCSRs in that it is more restrictive or places a greater burden on any entity subject to its provisions.

(2) If the inconsistent State law or regulation applies to interstate commerce and is more stringent than the FMCSRs, the State shall determine:

(i) The safety benefits associated with such State law or regulation; and

(ii) The effect of the enforcement of such State law or regulation on interstate commerce.

(3) If the inconsistent State law or regulation does not apply to interstate commerce or is less stringent than the FMCSRs, the guidelines for participation in the Motor Carrier Safety Assistance Program in §§ 350.341, 350.343, and 350.345 of this subchapter shall apply.

[57 FR 40962, Sept. 8, 1992, as amended at 65 FR 15109, Mar. 21, 2000]

§ 355.23 Submission of results.

Each State shall submit the results of its regulatory review annually with its certification of compliance under § 350.209 of this subchapter. It shall submit the results of the regulatory review with the certification no later than August 1 of each year with the Commercial Vehicle Safety Plan (CVSP). The State shall include copies of pertinent laws and regulations.

[65 FR 15109, Mar. 21, 2000]

§ 355.25 Adopting and enforcing compatible laws and regulations.

(a) *General.* No State shall have in effect or enforce any State law or regulation pertaining to commercial motor vehicle safety in interstate commerce which the Administrator finds to be incompatible with the provisions of the Federal Motor Carrier Safety Regulations.

(b) *New state requirements.* No State shall implement any changes to a law or regulation which makes that or any other law or regulation incompatible with a provision of the Federal Motor Carrier Safety Regulations.

(c) *Enforcement.* To enforce compliance with this section, the Administrator will initiate a rulemaking proceeding under part 389 of this subchapter to declare the incompatible State law or regulation pertaining to commercial motor vehicle safety unenforceable in interstate commerce.

(d) *Waiver of determination.* Any person (including any State) may petition for a waiver of a determination made under paragraph (c) of this section. Such petition will also be considered in a rulemaking proceeding under part 389. Waivers shall be granted only upon a satisfactory showing that continued enforcement of the incompatible State law or regulation is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

(e) *Consolidation of proceedings.* The Administrator may consolidate any action to enforce this section with other proceedings required under this section if the Administrator determines that such consolidation will not adversely affect any party to any such proceeding.

APPENDIX A TO PART 355—GUIDELINES FOR THE REGULATORY REVIEW

Each State shall review its laws and regulations to achieve compatibility with the Federal Motor Carrier Safety Regulations (FMCSRs). Each State shall consider all related requirements on enforcement of the State's motor carrier safety regulations. The documentation shall be simple and brief.

SCOPE

The State review required by § 355.21 may be limited to those laws and regulations previously determined to be incompatible in the

report of the Commercial Motor Vehicle Safety Regulatory Review Panel issued in August 1990, or by subsequent determination by the Administrator under this part, and any State laws or regulations enacted or issued after August 1990.

APPLICABILITY

The requirements must apply to all segments of the motor carrier industry common, contract, and private carriers of property and for-hire carriers of passengers.

DEFINITIONS

Definitions of terms must be consistent with those in the FMCSRs.

DRIVER QUALIFICATIONS

Require a driver to be properly licensed to drive a commercial motor vehicle; require a driver to be in good physical health, at least 21 years of age, able to operate a vehicle safely, and maintain a good driving record; prohibit drug and alcohol abuse; require a motor carrier to maintain a driver qualification file for each driver; and require a motor carrier to ensure that a driver is medically qualified.

NOTE: The requirements for testing apply only to drivers of commercial motor vehicles as defined in 49 CFR part 383.

DRIVING OF MOTOR VEHICLES

Prohibit possession, use, or driving under the influence of alcohol or other controlled substances (while on duty); and establish 0.04 percent as the level of alcohol in the blood at which a driver is considered under the influence of alcohol.

PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Require operational lights and reflectors; require systematically arranged and installed wiring; and require brakes working at the required performance level, and other key components included in 49 CFR part 393.

HOURS OF SERVICE OF DRIVERS

The following is a high-level summary of the hours-of-service regulations governing property and passenger carriers. The description below outlines only some of the major provisions, but does not capture all the detailed requirements. For the detailed provisions, which include rest breaks, sleeper berth, and records of duty status issues, see part 395 of this subchapter.

The hours-of-service regulations prohibit both property and passenger carriers from allowing or requiring any driver to drive as follows:

1. *Property.* More than 11 hours after 10 consecutive hours off duty within a consecutive 14-hour duty period, and more than 60/70

Pt. 356

49 CFR Ch. III (10–1–15 Edition)

hours on duty in 7/8 consecutive days. A driver may restart a 7/8 consecutive day period after taking 34 or more consecutive hours off duty, which includes two periods from 1 a.m. to 5 a.m., home terminal time. The restart may be used only once per week, or 168 hours, measured from the beginning of the previous restart.

2. *Passenger.* More than 10 hours after 8 consecutive hours off duty within a 15-hour duty period, and more than 60/70 hours on duty in 7/8 consecutive days.

INSPECTION AND MAINTENANCE

Prohibit a commercial motor vehicle from being operated when it is likely to cause an accident or a breakdown; require the driver to conduct a walk-around inspection of the vehicle before driving it to ensure that it can be safely operated; require the driver to prepare a driver vehicle inspection report; and require commercial motor vehicles to be inspected at least annually.

HAZARDOUS MATERIALS

Require a motor carrier or a person operating a commercial motor vehicle transporting hazardous materials to follow the safety and hazardous materials requirements.

STATE DETERMINATIONS

1. Each State must determine whether its requirements affecting interstate motor carriers are “less stringent” than the Federal requirements. “Less stringent” requirements represent either gaps in the State requirements in relation to the Federal requirements as summarized under item number one in this appendix or State requirements which are less restrictive than the Federal requirements.

a. An example of a gap is when a State does not have the authority to regulate the safety of for-hire carriers of passengers or has the authority but chooses to exempt the carrier.

b. An example of a less restrictive State requirement is when a State allows a person under 21 years of age to operate a commercial motor vehicle in interstate commerce.

2. Each State must determine whether its requirements affecting interstate motor carriers are “more stringent” than the Federal requirements: “More stringent” requirements are more restrictive or inclusive in relation to the Federal requirements as summarized under item number one in this appendix. For example, a requirement that a driver must have 2 days off after working 5 consecutive days. The State would demonstrate that its more stringent requirements:

a. Have a “safety benefit;” for example, result in fewer accidents or reduce the risk of accidents;

b. Do not create “an undue burden on interstate commerce,” e.g., do not delay, interfere with, or increase that cost or the administrative burden for a motor carrier transporting property or passengers in interstate commerce; and

c. Are otherwise compatible with Federal safety requirements.

3. A State must adopt and enforce in a consistent manner the requirements referenced in the above guidelines in order for the FMCSA to accept the State’s determination that it has compatible safety requirements affecting interstate motor carrier operations. Generally, the States would have up to 3 years from the effective date of the new Federal requirement to adopt and enforce compatible requirements. The FMCSA would specify the deadline when promulgating future Federal safety requirements. The requirements are considered of equal importance.

[57 FR 40962, Sept. 8, 1992, as amended at 58 FR 33776, June 21, 1993; 62 FR 37151, July 11, 1997; 65 FR 15110, Mar. 21, 2000; 78 FR 58478, Sept. 24, 2013; 79 FR 59455, Oct. 2, 2014]

PART 356—MOTOR CARRIER ROUTING REGULATIONS

Sec.

356.1 Authority to serve a particular area—construction.

356.3 [Reserved]

356.5 Traversal authority.

356.7 Tacking.

356.9 Elimination of routing restrictions—regular route carriers.

356.11 Elimination of gateways—regular and irregular route carriers.

356.13 Redesignated highways.

AUTHORITY: 5 U.S.C. 553; 49 U.S.C. 13301 and 13902; and 49 CFR 1.87.

SOURCE: 62 FR 32041, June 12, 1997, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 356 appear at 66 FR 49870, Oct. 1, 2001.

§ 356.1 Authority to serve a particular area—construction.

(a) *Service at municipality.* A motor carrier of property, motor passenger carrier of express, and freight forwarder authorized to serve a municipality may serve all points within that municipality’s commercial zone not beyond the territorial limits, if any, fixed in such authority.

(b) *Service at unincorporated community.* A motor carrier of property, motor passenger carrier of express, and freight forwarder, authorized to serve